

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

TIMOTHY O'DELL SIMMS,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-15-764-D
)	
WARDEN BEAR,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner Timothy O'Dell Simms, an Oklahoma state prisoner appearing pro se, has filed a motion for leave to proceed *in forma pauperis*, a supporting affidavit, and a certified statement showing the amount of money he has in his institutional accounts (Doc. Nos. 2, 2-1). This matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b). Having reviewed the motion, the undersigned finds that Mr. Simms has a current balance of \$896.15 in his institutional account(s), which is sufficient to prepay the \$5.00 filing fee for his petition for a writ of habeas corpus. *See* Pl.'s ODOC Offender Statement Report, Doc. No. 2-1, at 1; Okla. Stat. tit. 57, § 549(A)(5) (permitting inmate's use of funds from mandatory savings account for filing fee in federal action).

Because Mr. Simms has not demonstrated an inability to prepay the filing fee, the undersigned recommends that the District Judge:

- (1) deny the motion for leave to proceed *in forma pauperis* (Doc. No. 2);

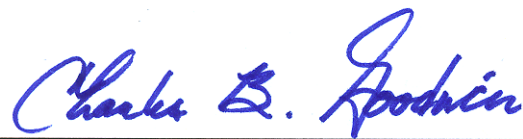
- (2) order Mr. Simms to pay the full \$5.00 filing fee, *see* Rules 1(b), 3(a), 12 of the Rules Governing Section 2254 Cases in the United States District Courts; LCvR 3.2, 3.3(e); and
- (3) dismiss the action without prejudice to refiling if Mr. Simms fails to timely pay the filing fee to the Clerk of this Court, or to show good cause for the failure to do so, *see* LCvR 3.3(e).

NOTICE OF RIGHT TO OBJECT

Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by August 20, 2015, in accordance with 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72. Petitioner is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation does not terminate the referral of this matter to the undersigned Magistrate Judge.

ENTERED this 30th day of July, 2015.



CHARLES B. GOODWIN
UNITED STATES MAGISTRATE JUDGE